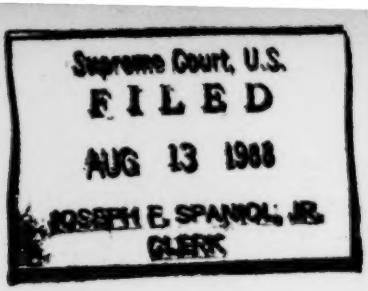
88-490



NO. 83-7389

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1988

PAUL M. CROSS,

Petitioner,

vs.

THE STATE INSURANCE FUND
OF THE STATE OF NEW YORK

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Paul M. Cross
57 Corbin St. (Apt. 5)
Jersey City, NJ 07306
Home (201) 433-9657
Office (212) 312-7250

QUESTION PRESENTED

Whether an ordinance that requires petitioner who is a white race to be forced in the lowest grade of servitude suffering losses of his personal values, nullified his career under blacks supervision and majority. The petitioner is a United States citizen, graduate of Oxford-Cambridge-London unified: Political Sciences, Economics, and Mercantile Laws; United States Colleges Accountancy Division for The Public Accountants. Such loss is an ideal corruption, constitutes an abridgement of the Fifth, The Thirteenth, and The Fourteenth Amendments.

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In The Supreme Court of The United States

October Term, 1988

No.

Cross, Paul M.

Petitioner Pro Se

Vs.

The State Insurance Fund

State of New York.

Petition for a write of Certiorari to The United States Court for the Second Circuit.

OPINION BELOW

The opinion of the court of appeals (App. 10a) was ordered not to be reported. The opinion of the District Court (App. 15a)

JURISDICTION

The judgement of the court of appeals was entered on 5th May 1988, and petition for rehearing was denied on April 15, 1988 (App. 10a). On July 12, 1988 the Chief Justice William H. Rehnquist extended the time for filing a petition for a writ of certiorari to include August 13, 1988 (App. 20a.)

THE CONSTITUTIONALITY

The Fifteenth Amendment (Dec. 15, 1791) (No person shall) be deprived of life, liberty, or property without due process of law, nor shall private property taken for public use without just compensation.

The Thirteenth Amendment (Dec. 1865) Neither slavery nor involuntary servitude except as punishment.

The Fourteenth Amendment (July 28, 1868), All persons born or naturalized in the United States and subject to the jurisdiction thereof are citizens of the United States and the State where they reside. No state shall make or enforce any law which shall abridge the privileges of immunities of citizens of United States, nor shall any state deprive any person the protection of law.

STATEMENT

A. The Background of the Petitioner

1) The petitioner graduate of Universities of Oxford-Cambridge-London it is certified by Saint Peter's Colleges on the top of it's transcript, and I am graduate of the Colleges of United States, Accountancy Division for Public Accountants.

2) On March 1981 employed at the State Insurance Fund, State of New York, in a permanent position typist Grade 3.

3) On December 1982, passed the Examination of Professional Career 20/200 Auditor/Accountant enlisted eligible for the position at score 60.0-, The State Insurance Fund Claims

Medical, Division 2, Acted on by Mr. Pinto, who was the principal at that time, had denied me to fill a position of many, Pinto was totally disabled in all his both hands fingers. After his retirement, Ms. Mae E. Gunn, and Mr. Suraci, Peter were named for his place.

4) I suddenly received the United Staes Flag to put in my office as a principal, I was fought madly by both Ms. Mae Gunn and Mr. Suraci, by different means of fight blowing in the eyes, throughing dust, fabrication of disciplinary action and agigitating the subordinate employees, and they have their agents outside, sticking deadly sharp materials in sensitive parts of the body, taking chances in the crowds of the rush hours.

The hatred of the blacks to the whites is a natural discrimination of the opposites of colors, but the important that the advancement of the moon mind or plant's mind, and the none mind not even the imitative mind, the mind of the constitutional law and the new creation the emancipation the blacks from themselves as it is acted in the acts of the Affirmative Action Training Act, as in all of their political activities. Whatsoever the white donates to them, that they feel only

about the rendering of his institutions, they want more, and more they abjur the blasphemy of his divinity. This how I observe them and understand them, and that in their acts and cult.

THE LITIGATION

As my cult and career dictates to me I have nothing, but the law it is my only remedy and my hope. The Commission of The Equal Opportunities as it's majority blacks, and the second, the District Court of the Second Circuit, Judge Cedarbaum, Mariam, said, "That happened I am black." and denied the case, and affirmed the Affirmative Action, and thirdly, The Court for Appeals, also denied the case. Thus thrice, Your Justice, (My Lord) the sacrement of the law abjured. The substances of this case test, no answering papers had never been submitted, to contradict the Civil Service Examination, my English Cult, and Division of Accountancy. The three major elements for the position, true I am not the same as Mae E. Gunn, or Peter Suraci...etc. without any education at all. It is the same nature of conflict, black and white, ignorance and knowledge, education and illiteracy.

CONCLUSION

The petition for a writ of certiorari of the tort is the conflict of interest or the natural conflict of interest caused by the diversity, as the conflict of disease and the immunity in the body, the structure of the law and it's perfect immune, or the endemic...my equalization even to the ignoramus a must. The writ of certiorari should be granted.

Respectfully submitted

Paul M. Cross

P.O. Box 16554

Jersey City, NJ 07306

Office (212) 312-7250

APPENDICES

Court of Appeal

United States Court

Foley Square, New York, NY 10007

Docket No. 87-7389

Cross, Paul M. Plaintiff-Appellant, Pro Se

P.O. Box 16554

Jersey City, NJ 07306

Vs.

State Insurance Fund Defendant-Appellee

199 Church Street

New York, NY 10007

I am the Plaintiff, Cross, Paul M. Pro Se, is appealing the Decision of the District Court, the Docket No. 86 Civil 1517 (MGC), Mar. 31, 1987: -

Because there was not a Calendar Hearing date, there were only two conferences, during which I am the plaintiff had pointed out to the judge the discriminatory acts, and the judge has ordered the representative of the Defendent to bring the list of the promotions, the presentative Mr. Drucker has never brought the list as was ordered....but in second conference

the defendent's representative had brought a Motion, which was granted by the Decision without Hearing on Mar. 27, 1987, and was mailed to me.

The Discriminatory acts of the defendent which I had pointed out in the appointment and promotions of mine: -

During the seven years; since 12/4/72 the date of my passing the Civil Service Test of the State of New York, and still till present time.

Paul M. Cross V SIF Docket No. 87-3789

Copy of the Eligibility Notification of the Civil Service Examination follows:

306-62-6066

Cross, Paul

57 Corbin Avenue

Jersey City, NJ 07306

EXAM NO. AND TITLE

20-200 Professional Careers in Accounting and Auditing

Final Rating: 60.0

Date of Exam 12/4/82

STATE OF NEW YORK

DEPARTMENT OF CIVIL SERVICE

Division of Examinations and Staffing Services

STATE OFFICE BUILDING CAMPUS

ALBANY, NEW YORK 12239

YOUR NAME WILL BE PLACED ON THE ELIGIBLE LIST IN ORDER OF FINAL RATING FOR A PERIOD OF 1 YEAR

Copy 2 - Candidate

Paul Cross, V SIF Docket No. 87-7389

My credentials as requested by the laws of the both states: -

Taken from Academic Record of Saint Peter's College

Saint Peter's College

Jersey City, New Jersey 07306

Englewood Cliffs, New Jersey 07632

Academic Record of: Cross, Paul M.Date Recorded 5/7/87

Social Security No. 306-62-6066

High School: OXF-CAM London, Year Graduated: 1963

Session: Eve - Degree: 2S - Major: Acctg - Adm. Date: 2/76

FALL SEM. 1975-76

Term	Cat.#	Sec.#	Title	Cred. Att.	Cred. Earn.	Grade
1	BL031	34	Survey & Contracts	3.0	3.0	3.0
1	EC021	33	Prin Economics 1	3.0	3.0	2.0
			SPRG. SEM. 1975-76			
4	AC331	14	Inter Acct. Thry I	3.0	3.0	1.0
4	BL032	24	Agency Org & Trade	3.0	3.0	2.5
4	EC022	12	Prin of Eco II	3.0	3.0	2.0

SPRG TRI 1975-76

5	AC332	06	Inter Acctg Thry I	3.0		0.0
5	EC457	14	Invest Anal	3.0		0.0

FALL TRI 1976-77

2	AC341	61	Adv Acctg Thry	3.0	3.0	1.0
2	AC551	51	Taxation	3.0		0.0
2	CM125	54	Basic Tech of Comm	3.0	3.0	3.0

WINTER T 1976-77

3	AC444	63	Auditing Princ	3.0	3.0	1.0
3	DP676	52	IBM 360 Bal II	3.0		0.0
3	HS332	51	American History I	3.0	3.0	1.5

SPRG TRI 1976-77

5	AC443	53	Cost Accounting	3.0	3.0	2.0
5	BM031	56	Anal of Mgt Proces	3.0	3.0	1.0

FALL TRI 1982-83

2	AC551	51	Taxation	3.0	3.0	1.0
2	PL025	61	Intro Phil & Hist	3.0		WD

YEARLY AVERAGES

1975-76 — AVE. 1.50

1976-77 — AVE. 1.19

1982-83 — AVE. 1.00

CREDITS ATTEMPTED: 48.0

CREDITS EARNED: 36.0

GRADE POINTS: 63.0

GRADE AVERAGE: 1.31

GCR: 36.0

SUSPENDED ACADEMIC DEFICIENCY 6/77

READMITTED ON ACADEMIC PROBATION 9/82

PAUL M. CROSS, 57 Corbin Avenue, Jersey City, NJ 07306

FROM UNIVERSITY COLLEGE, NEWARK, NJ

CROSS, PAUL — NUMBER: 748095

DATE OF BIRTH 5/5/34

DATE OF ADMISSION: 9/79

SPR. 1980 62-01-010 03 748095

62	011	211	Financial Accounting	3.0	C+
62	011	330	Management Process	3.0	D
62	011	340	Marketing	3.0	D

DEGREE CREDITS: 27.0 Term; Avg: 1.500; Cum. Avg. 1.500

FALL 1980 62-01-010 03 748095

62	010	433	Govt Acctng & Auditing	3.0	F
62	640	001	Prep Mathematics	3.0	F

DEGREE CREDITS: 27.0 Term; Avg: 0.000; Cum. Avg. 1.125

Dated: April 29, 1987

FROM JERSEY CITY STATE COLLEGE

PAUL CROSS: I.D. NUMBER 306-62-6066

Course #	Course Title	Gr.	Att. Hrs.	Earn. Hrs.	Qual. Pts.
Fall 83	Cumulative				
BU0312	Personnel Mgt	D	30	30	30
BU0351	Intermediate Acctg I	C	30	30	60
	SEMESTER: 2.50		60	60	90
	CUMULATIVE: 2.50		60	60	90
85 Sum2	Cumulative		60	60	90
2MA0111	Elem Algebra	F	30		00
	SEMESTER: 0.00		30	00	00
	CUMULATIVE: 1.00		90	60	90
	MAJOR: 4901				
85 Fall	Cumulative		90	60	90
2CS0105	Data Processing I	C	30	30	60
2MA0111	Elem Algebra	D	30	30	30
	SEMESTER: 1.50		60	60	90
	CUMULATIVE: 1.20		150	120	180
	MAJOR 4901				

F I A F

French Institute / Alliance Francaise 22 East 60th Street, New York, N.Y. 10022-1077 (212) 355-6100

CERTIFICATE OF COMPLETION

Paul CROSS

This is to certify that the above-named student was registered in and has completed the work of a French course at the French Institute/Alliance Française.

TERM	COURSE
Fall 1986	AL 102 Acc 8/AL 103 Acc 2
Spring 1987	AL 104 Acc 9/AL 105 Acc9
Summer 1987	Intermediate French 201 Reg 1
Fall 1987	Intermediate French 202 Reg 1/410 Reg 1
Summer 1988	French Review FR 231 Reg 1

DATE: August 29, 1988

SIGNATURE: F. Mead

(Mrs.) F. Mead
Director of Courses

Cross, Paul M. V S.I.F. Docket No. 83-7389

In accordance with the laws of both states, of New York and New Jersey, the requirements for Certified Public Accountant are 60 credits of professional subjects:

24 Accountancy

6 Commercial Law

6 Finance

6 Economics

18 Other business credits

---

60 Total

The defendent has appointed provisional, of most, and without, credentials, or Civil Service Test, and promoted from Grade 1 to Grades 25, for the Accounting and Auditing Careers 20/200, the defendent had requested the Eligibilty Notification, I was tested by the Civil Service, and the defendent was Notified.

My answers were as follows:

1 C, 2 A, 3 B, 5 B, 6 C, 7 C, 8 B, 9 A, 10 D, 11 B, 12 A, 13 B, 14 B, 15 A, 16 B, 17 C, 18 A, 19 A, 20 D, 21 B, 22 C, 23 A, 24 B, 25 B, 26 C, 27 A, 28 D, 29 C, 30 B, 31 D, 32 D, 33 B, 34 B, 35 B, 36 C, 38 A, 39 D, 40 C, 41 C, 42 B, 43 D, 44 A, 45 C, 46 C, 47 B, 48 C, 49 A, 50 C, 51 -, 52 B, 53 D, 54 A, 61 A, 62 A, 63 D, 64 D, 64 A, 65 D, 66 -, 67 A, 68 C, 69 D, 70 D, 71 D, 71 B, 72 B, 73 -, 74 B, 75 A.

The grading of the test was from No. 1 to 15 each 6, from 16 to 36 each 3, from 37 to 75 each 1.

am graduate of Oxford-Cambridge-London unified from the Anglo-Egyptian Ministry of Eduation, as U.S.A., and satisfying all requirements, of Education, as of experiences of the same nature.

The discriminatory causes which are hidden and some of it had appeared in the following copy:

TRAINING MANUAL PULLED

By Adam Nagourney

Daily News Albany Bureau Chief

A state affirmative action training manual was abruptly yanked from circulation 10 days ago after officials discovered it said that "all White individuals in our society are racists."

Before the recall, the manual was used by the State Insurance Fund during three seminars attended by 100 employees, officials said. Subsequent seminars were canceled and officials attempted to retrieve the 38 page document, which was to be the fund's official guidebook on affirmative action.

The document was written by affirmative action officer Carolyn Pitts, who is black. Pitts, who came to the $39,782 a year job from an advertising agency in April 1985, did not return numerous phone calls.

'Just Shocked'

"We were just shocked," said fund spokeswoman Maria Van Hoy. "It's not official. It wasn't approved."

Van Hoy said that Pitts told Insurance Fund officials that the manual was a compilation of other similar manuals she had read. However, Pitts has not yet been able to produce any manuals with similar opinions on whites and racism, Van Hoy said. She added that none of the controversial passages was read aloud at the seminars.

The manual contained a history of affirmative action laws and guidelines for officials to use in handling affirmative action cases. The phrases dealing with racism that Van Hoy said led officials to withdraw the manual included:

• "All White individuals in our society are racists. Even if a White is totally free from all conscious racial prejudices, he remains a racist for he receives benefits distributed by a White racist society through its institutions.

• "Our institutional and cultural processes are so arranged as to automatically benefit Whites, just because they are White.

• "In the United States at present only Whites can be racist since Whites dominate and control the institutions that create and enforce American cultural norms and values."

A spokesman for Gov. Cuomo said the publication "hardly reflects administration policy."

The training sessions took place at the agency's office at 199 Church Street on April 13, 20, and 21. Van Hoy said that it was not until the third session that a participant brought the controversial passages to the attention of Insurance Fund officials. Van Hoy added that the manual was not cleared with fund chiefs before distribution.

Van Hoy said that the Insurance Fund's board of commissioners is slated to meet May 28 with Pitts and then consider what - if any - action should be taken.

The agency's executive director, Arnold Kideckel, did not return phone calls.

Paul M. Cross Docket No. 87-7389

Text of Article appearing in New York Times, May 4, 1987

RACIAL REMARKS FORCE RECALL OF STATE MANUAL

By Esther Iverem

An affirmative action manual used to train 100 New York state employees has been recalled because it characterized all white Americans as racist.

The 38 page manual, distributed to employees of the State Insurance Fund for three training sessions last month, was compiled by the agency's affirmative action officer, Carolyn Pitts, according to an agency spokesman, Maria Van Hoy. Part of Ms. Pitt's duties include educating staff members about affirmative action guidelines.

According to Mrs. Van Hoy, Ms. Pitts said she had compiled the booklet and definitions from many different affirmative action training guides and materials used in the past. Ms. Pitts, who is black, has been an agency employee since 1985. She could not be reached at her home yesterday.

The manual does not "reflect the feeling of management", Mrs. Van Hoy said and was never intended to be an official state document. She said that no one in management reviewed the booklet before it was distributed and, though it was used at training sessions for supervisors on April 13, 20 and 21 at the agency office at 199 Church Street, no one in management knew of its contents before a complaint was made.

'Only Whites Can Be Racists'

The passages are included in a section entitled "Definitions of Racism", in which prejudice - "unfavorable opinion formed beforehand without knowledge" - is distinguished from racism, which the manual says "involves having the power to carry out systematic discriminatory practices through the major institutions of our society."

The manual added that "in the United States at present, only whites can be racists since whites dominate and control the institutions" and "even if a white is totally free from all conscious racial prejudices, he remains a racist, for he receives benefits distributed by a white racist society through its institutions."

At the end of the last session, one participant complained that sections of the manual "were inflammatory." Afterward, training was immediately suspended by the agency's executive director, Arnold Kideckel, and the manuals were recalled, Mrs. Van Hoy said.

The manual has become "an embarrassment" Mrs. Van Hoy said. The agency, which has 2,000 employees, provides workers' compensation insurance to state employees injured on the job and to families of those killed while working. It is composed of eight appointed commissioners and an administrative staff. Those receiving affirmative action training were supervisors of the computer and underwriting departments.

Assemblyman Dov Hikind, a Brooklyn Democrat, distributed the manual to the news media, calling it "hatefilled and inflammatory."

In the past, the Assemblyman has involved himself in other bias issues. Last month, he asked a grievance committee to investigate a black lawyer who said in court that a white assault victim had "racial hang-ups" against her reported black attackers. Two years ago, Mr. Hikind criticized what he said was a lack of police attention to the vandalism of several Jewish businesses in Brooklyn that he said was anti-Semitic in nature.

Mrs. Van Hoy said that a committee composed of the agency's commissioners and managers is conducting an internal review. They will present their findings at a meeting of the board of commissioners on May 28. Ms. Pitts has been asked to attend the meeting.

In spite that they are only 20% of population, and occupying of more than 75% of the position of the State Insurance Fund. Why are they severly attacked on our cult (Civilization: technology, invinations...etc.)?, in such doctrines...and others? Because of their none acceptance of their natural nature, and despositions as blacks. The Affirmative Action is black Executive Employee, and important top of the responsible supervisition, of the Chain Command, and who are thoroughly within the Civil Service Departments, and the Union...etc....

The State Insurance Fund, the defendant, did not feel the sickness of discriminatory acts within its body, and does not know how to cure it, till the natural immunity of the natural laws markedly improved through out this case, as I had presented to the justice. I am the Plaintiff, Cross, Paul M., pro se, entitled for the natural damages and injuries, and the consequences retroactively from the date 12/4/82, the date of the Official Notification of my eligibility for the position declared by the Civil Service, under the Title VII 5000e-5, should had been promoted with the Grades to Grade 25, to suite my career.

Respectfully submitted,

Paul M. Cross

June 12, 1987 Plaintiff, Pro Se

LWP 86-1517

UNITED STATES COURT OF APPEALS

FOR THE SECOND DISTRICT

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse in the City of New York, on the ninth day of November, one thousand nine hundred and eight-seven.

PRESENT:

HON. IRVING R. KAUFMAN

HON. LAWRENCE W. PIERCE

HON. ROGER J. MINER

Circuit Judges

PAUL M. CROSS

Plaintiff-Appellant

v

STATE INSURANCE FUND OF THE STATE OF NEW YORK

Defendant-Appellee

Appeal from an order of the United States District Court for the Southern District of New York, Cedarbaum, J., granting summary judgment in favor of defendant State Insurance Fund of the State of New York ("Fund").

This action arises out of a complaint filed by appellant Cross alleging that his employer, the Fund, denied him a promo-

tion on account of his race, sex, religion, national origin, and age. Cross is a Caucasian, Catholic male of Egyptian origin, and was fifty years old at the time he filed his complaint. Cross contends that he passed the New York State Civil Service Examination #20-200, which is a prerequisite to promotion to the professional positions of Assistant Accountant, Compensation Claims Auditor, and Insurance Premium Auditor, but that the Fund both omitted his name from the promotion eligibility list, and promoted other individuals who had not passed the test.

The district court read the complaint as stating two causes of action under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e-2 et seq. (1982), one alleging disparate treatment, and one alleging disparate impact. In response to the complaint the Fund filed a motion for summary judgment, which the district court granted on March 27, 1987.

We have reviewed appellant's arguments that the district court erred in granting summary judgment, and we find them to be without merit. Under Fed. R. Civ. P. 56, summary judgment is appropriate when the nonmoving party fails to establish the existence of an element essential to his case. Celotex Corp. v. Catrett, 106 S. Ct. 2548, 2553 (1986). Applying this standard first to Cross' claim of disparate treatment, we note that, to prevail on this cause of action, Cross would have to prove that he was qualified for the job he was

denied, and that he was rejected under circumstances giving rise to an inference of unlawful discrimination. Texas Dept. of Community Affairs v. Burdine, 450 U.S. 248, 253 (1981). Because appellee successfully met its burden of informing the district court of the basis for its summary judgment motion, both by pointing to an absence of evidence in support of the claim, and by producing evidence that Cross had failed the examination and was therefore not qualified for the position, it was incumbent upon Cross to come forward with evidence in support of his claim in order to avoid summary judgment. Celotex, 106 S. Ct. at 2553. Cross' failure to come forward with such evidence established appellee's right to judgment as a matter of law. Applying the Rule 56 standard to Cross' claim of disparate impact, we note that, to prevail on this cause of action, Cross would have to prove that the Civil Service examination had a significantly discriminatory impact. Connecticut v. Teal, 457 the impact of the test on Caucasian, Catholic males of Egyptian origin in his age group, summary judgment was appropriate on this second claim as well.

For the foregoing reasons, the judgment of the district court is affirmed.

HON. IRVING R. KAUFMAN, HON. LAWRENCE W. PIERCE

HON. ROGER J. MINER — Circuit Judges

N.B. This summary order will not be published in the Federal Reporter and should not be cited or otherwise relied upon in unrelated cases before this or any other court.

ITEMIZED AND VERIFIED BILL OF COSTS

STATEMENT OF COSTS

Taxed in the amount of $333.55 in favor of Appellee, State Insurance Fund for the Court

Elaine B. Goldsmith, Clerk

Arthur M. Heller, Deputy Clerk

Date: April 15, 1988

United States Court of Appeals for the Second Circuit

PAUL M. CROSS,

Plaintiff-Appellant

STATE INSURANCE FUND,

Defendant-Appellee

Docket No. 87-7389

Counsel for Defendant-Appellee respectfully submits, pursuant to Rule 39(c) of the Federal Rules of Appellate Procedure the within bill of costs and requests the Clerk to prepare an itemized statement of costs taxed against the Plaintiff-Apellant and in favor of Defendant-Appellee for insertion in the mandate.

Docketing Action

Cost of printing appendix (necessary copies____) _____

Cost of printing brief (necessary copies 12) $383.55

Cost of printing reply brief (necessary copies) _____

(VERIFICATION HERE)

RAYMOND C. GREEN
Attorney for Defendant-Appellee
STATE INSURANCE FUND
199 Church Street
New York, New York 10007
(212) 312-7880

State of New York

County of New York ss:

I am the attorney for the Defendant-Appellee, State Insurance Fund, I have read the itemized bill of costs shown above, know the contents thereof and the same is true to my knowledge. I affirm the foregoing statements are true under penalty of perjury.

Dated: November 19, 1987, RAYMOND C. GREEN

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

PAUL M. CROSS

Plaintiff

against

STATE INSURANCE FUND

Defendant

86 CIVIL 1517

JUDGMENT

Defendant having moved for summary judgment on the ground that there is no genuine issue of material fact and the said motion having come before the honorable MIRIAM G. CEDARBAUM, U.S.D.J., and the Court thereafter on March 27, 1987, having handed down its memorandum opinion (60743), granting defendant's motion for summary judgment, it is,

ORDERED, ADJUDGED AND DECREED: That the complaint be and it is hereby dismissed.

DATED: NEW YORK, NEW YORK

March 31, 1987

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

PAUL M. CROSS,

Plaintiff,

against

STATE INSURANCE FUND,

Defendant

86 Civ. 1517 (MGC)

MEMORANDUM OPINION

APPEARANCES:

PAUL M. CROSS, Pro Se

57 Corbin Avenue, Apt. A-5

Jersey City, New Jersey 17306

RAYMOND C. GREEN

Attorney for Defendant

199 Church Street

New York, New York 10007

BY: Dennis Drucker, Esq.

CEDARBAUM, J.

This is an action under Title VII, 42 U.S.C. §5000e-5, by Paul M. Cross ("Cross") against his employer, State Insurance Fund ("State Insurance") alleging that defendant's failure to promote him to a position in auditing or accounting was discriminatory. On November 5, 1984, plaintiff filed a complaint with the Equal Employment Opportunity Commission ("EEOC"). The EEOC issued plaintiff a "Notice of Right to Sue" on December 13, 1985. Plaintiff commenced this action on February 20, 1986.

Defendant moved for summary judgment on the ground that there is no genuine issue of material fact and that defendant is entitled to judgment as a matter of law. Because it is apparent that plaintiff failed to pass Civil Service Examination #20-200 Professional Position in Accounting and Auditing ("Civil Service Exam #20-200"), which is a requirement for the promotion and reclassification which plaintiff is seeking, defendant's motion for summary judgment is granted.

DISCUSSION

Since 1981, plaintiff, who is 50 years old, has been employed by State Insurance in the position of Typist, Grade III. Plaintiff claims that in December 1982, he took and passed Civil Service Exam #20-200 and that, since that time, he has been denied promotion or reclassification of title. Plaintiff also claims that Lewis D. Corvene, the Director of Per-

sonnel for State Insurance, erroneously reported that plaintiff did not pass the test, and as a result, plaintiff's name was omitted from the eligibility list for promotional opportunities. Based on these allegations, plaintiff contends that defendant has discriminated against him because of his race, sex, religion, national origin and age. Plaintiff is a Caucasian male of Egyptian origin and is catholic.

Defendant states that it used Civil Service Exam #20-200 to fill the positions of Assistant Accountant, Compensation Claims Auditor and Insurance Premium Auditor. Based upon a review of the State Insurance personnel files, Margaret Winberry, the Associate Personnel Administrator, states in her affidavit that no State Insurance employee has been appointed to any of these positions since 1981 (the time of plaintiff's employment) unless the individual had passed the Civil Service Exam #20-200. Persons from outside State Insurance have been appointed provisionally to these positions if they are college graduates and have 24 credits in accounting. Defendant has failed to explain the meaning of a provisional appointment. But plaintiff has not submitted an information to suggest that he is a college graduate and, therefore, he cannot complain if he was treated differently from this group.

It is apparent from the exhibits attached to plaintiff's complaint that, despite plaintiff's claim to the contrary, he did not pass the Civil Service #20-200 exam. In March 1983, plaintiff sent a letter to the Department of Civil Services, Division

of Examination and Staffing Service, inquiring about his examination score. In response to the inquiry, Robert Parrish, Deputy Director, Bureau of Staffing Services, wrote, in pertinent part:

> Because of your concern...I have directed a member of my staff to personally check the scoring of your paper. This review confirmed that the original notification you received indicating that you had received a score of 60 was correct. Until recently, any score below 60 was reported as a 60. We have now changed our policy and report to candidates their exact score. Your exact score on this examination was 46.

A score of 60 or more is a passing score.

Under Rule 56 of the Federal Rules of Civil Procedure, the entry of summary judgment is appropriate if, after adequate time for discovery, no genuine issue exists as to any material fact. Celotex Corp. v. Catrett, 106 S. Ct. 2548 (1986). In this case, the only material issue of fact is whether plaintiff passed the Civil Service #20-200 exam which would have made him eligible for promotion. The plaintiff has failed to submit any evidence that would support his contention that he passed the examination. Nor has he submitted any evidence refuting the defendant's claim that no one was promoted to the positions plaintiff was seeking without passing the Civil Service #20-200 exam.

Plaintiff has failed to raise any issue of material fact that would preclude the entry of summary judgment. Because plaintiff has failed to pass an examination that is a prerequisite for promotion, plaintiff cannot sustain his claim of discriminatory treatment.

Defendant's motion for summary judgment is granted.

SO ORDERED.

Dated: New York, New York, March 27, 1987.

MIRIAM GOLDMAN CEDARBAUM

United States District Judge

United States Court of Appeals

For The

Second Circuit

At a stated term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse in the City of New York, on the 15th day of April one thousand nine hundred and eighty-eight.

Present:

HON. IRVING R. KAUFMAN

HON. LAWRENCE W. PIERCE

HON. ROGER J. MINER

Circuit Judges

PAUL M. CROSS,

Plaintiff-Appellant,

STATE INSURANCE FUND OF THE STATE OF NEW YORK

Defendant-Appellee

Docket No. 87-7389

A petition for a rehearing having been filed herein by Plaintiff-Appellant, PAUL M. CROSS, pro se, Upon consideration thereof, it is Ordered that said petition be and it hereby is DENIED.

Elaine B. Goldsmith

Clerk

Supreme Court of the United States

No. A-15

PAUL M. CROSS,

Applicant,

V.

STATE INSURANCE FUND OF THE STATE OF NEW YORK

ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF CERTIORARI

UPON CONSIDERATION of the application of the applicant,

IT IS ORDERED that the time for filing a petition for a writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including August 13, 1988.

s/ William H. Rehnquist

Chief Justice of the United States

Dated this 12th day of July, 1988